



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

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STATE UNVEILS HOUSING APPEALS COMMITTEE REFORMS

Changes to further revamp Chapter 40B, the state's comprehensive permit law

In an effort to strike a balance between the critical need for housing in Massachusetts and valid local concerns about the impacts of new development, the Department of Housing and Community Development (DHCD) today unveiled a package of administrative and procedural reforms to the adjudicating body which oversees and resolves comprehensive permit disputes between communities and affordable housing developers.

An advisory committee was formed in August 2003 by DHCD Director Jane Wallis Gumble to evaluate the state Housing Appeals Committee's (HAC) and suggest regulatory changes to improve existing procedures, as well as reduce the backlog of cases currently pending before the committee. The 13-member advisory committee, was comprised of legal practitioners and other experienced professionals representing municipalities, developers and non-profits. The group, chaired by Clark Ziegler, Executive Director of the quasi-public Massachusetts Housing Partnership Fund, recommended several administrative actions to substantially enhance the consideration of housing appeals in the Commonwealth.

"By improving the 40B process, we are taking important steps towards expediting the permitting and building of a significant number of new housing units throughout the state which will be affordable to households earning a broad range of incomes," said Gumble. "The recommendations of the Advisory Committee, along with recent regulatory changes to Chapter 40B, will maintain the strength and effectiveness of the law, while preserving the quality of life in our communities."

Chapter 40B was enacted in 1969 to encourage communities to build more affordable housing. To comply with 40B, a community needs to have at least 10 percent of its permanent housing affordable to low- and moderate-income families. To help achieve that goal, the law authorizes comprehensive permits to be issued with limited exemptions from local zoning regulations provided that one-fourth of the developed units are affordable.

The HAC is an autonomous and independent entity housed within DHCD which resolves disputes that arise when a developer has a comprehensive permit request denied, or conditions added by local zoning board of appeals make an affordable housing proposal economically unfeasible. While a significant number of appeals are withdrawn or settled, cases often take years to get resolved and for a decision to be

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issued. There are nearly 70 disputed local decisions, totaling more than 6,000 potential new housing units, that are currently on hold awaiting hearings and decisions.

The Advisory Committee's recommendations encompass:

- Changing the Housing Appeals Committee's staffing and procedures including strengthening pre-trial hearings, requiring pre-filed direct testimony of all witnesses, encouraging summary disposition of cases and/or issues when appropriate, and holding hearings on consecutive days, so that cases are heard and decided on a more timely basis;
- Encouraging parties to voluntarily settle housing appeals rather than expend the time and resources needed to complete a Housing Appeals Committee hearing and decision process by routinely offering mediation of appeals through the Massachusetts Office of Dispute Resolution, building voluntary mediation sessions into the HAC calendar, utilizing a second hearing officer to assist parties with settlement during the pre-hearing process, and creating a self-supporting fund to assist with expenses whenever parties agree to mediation;
- Providing clear policy guidance to local zoning boards of appeals in order to encourage more decisions to be made locally without the need for appeals to the state.

"Over the past three years, DHCD has set forth a number of comprehensive reforms to Chapter 40B, said Gumble. "The amendments made, along with proposed changes currently pending before the Legislature, will make the law "a tool rather than a club", giving cities and town more control over the planning and development process in their communities."

A full copy of the report is available online at: www.mass.gov/dhcd.

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